

1
2
3
4 RAVI WHITWORTH,
5 Plaintiff,
6 v.
7
8 SOLARCITY CORP.,
9 Defendant.

10 Case No. 16-cv-01540-JSC
11

12
13 **ORDER RE: MOTION TO COMPEL**
14 **ARBITRATION**
15

16 Re: Dkt. No. 15
17

18 Defendant SolarCity Corp. has filed a motion to compel arbitration which is set for hearing
19 on June 30, 2016. (Dkt. No. 15.) The Court VACATES the hearing and ORDERS the parties to
20 submit supplemental briefing regarding why the Court should not stay the matter pending the
21 Ninth Circuit Court of Appeal's disposition of *Morris v. Ernst & Young, LLP*, No. 13-16599,
22 which was argued and submitted in November 2015.

23 In opposing SolarCity's motion to compel arbitration, Plaintiff contends that the
24 representative/class action waiver in the arbitration agreement here is unenforceable because it
25 runs afoul of the prohibition in the National Labor Relations Act of 1935 ("NLRA") on
26 restrictions on employee's right to "concerted activity." *See* 29 U.S.C. § 157. As the parties note,
27 there is a circuit split on this issue with the Second, Fifth, and Eighth Circuit concluding that class
action waivers do not violate the NLRA, and the Seventh Circuit taking the contrary position.
28 *Compare Sutherland v. Ernst & Young, LLP*, 726 F.3d 290, 297 n.8 (2d Cir. 2013); *D.R. Horton, Inc. v. N.L.R.B.*, 737 F.3d 344, 357 (5th Cir. 2013); *Owen v. Bristol Care, Inc.*, 702 F.3d 1050, 1055 (8th Cir. 2013); *with Lewis v. Epic Sys. Corp.*, No. 15-2997, 2016 WL 3029464, at *10 (7th Cir. May 26, 2016). The Ninth Circuit has yet to resolve this issue, but is poised to do so in
Morris v. Ernst & Young, LLP, No. 13-16599.

Accordingly, the parties shall meet and confer on whether they agree the case should be stayed pending the Ninth Circuit's decision. If so, they shall file a stipulation. If they do not agree to a stay, they shall simultaneously submit supplemental briefs not to exceed three pages addressing why the Court should not stay this matter while the appeal in *Morris* is pending. The briefs are due by July 1, 2016.

IT IS SO ORDERED.

Dated: June 20, 2016

Jacqueline Scott Corley
JACQUELINE SCOTT CORLEY
United States Magistrate Judge

United States District Court
Northern District of California